

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO

3 TEOBALDO CANCEL-RUIZ,

4 Plaintiff,

5 v.

6 UNITED STATES OF AMERICA,

7 Defendant.

Civil No. 11-1078 (JAF)

(Crim. No. 03-52)

8  
9 **OPINION AND ORDER**

10 Petitioner, Teobaldo Cancel-Ruiz, brings this pro-se petition under 28 U.S.C. § 2255  
11 for relief from sentencing by a federal court, alleging that the sentence was imposed in  
12 violation of his constitutional rights. (Docket Nos. 1; 1-1.) The Government opposes,  
13 (Docket No. 8), and Petitioner replies (Docket No. 9).

14 **I.**

15 **Factual and Procedural Summary**

16 On May 16, 2003, Petitioner entered into an agreement with the Government to plead  
17 guilty to one count of conspiracy to distribute at least fifteen (15) kilograms, but less than  
18 fifty (50) kilograms of cocaine. (Crim. No. 03-52, Docket Nos. 23; 30.) On October 3,  
19 2003, this court sentenced Petitioner to an imprisonment term of two-hundred ninety-two  
20 (292) months, and a supervised release term of five years. (Crim. No. 03-52, Docket  
21 No. 30.) Petitioner then appealed the sentence, raising a variety of challenges. (Crim.  
22 No. 03-52, Docket No. 32.) The First Circuit Court of Appeals rejected all of Petitioner's

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1 arguments except for one: Namely, that Petitioner's prior contempt of court conviction  
2 should not have been used to calculate Petitioner's criminal history category. (Crim.  
3 No. 03-52, Docket No. 42; United States v. Cancel-Ruiz, Appeal No. 03-2589, unpublished  
4 order.) On remand, in March 2006, we then amended our judgment to reflect Petitioner's  
5 correct criminal history category, reducing Petitioner's term by thirty months, for a total of  
6 two-hundred sixty two (262) months. (Crim. No. 03-52, Docket No. 49.)

7 More than four years and nine months later, Petitioner filed this § 2255 motion.  
8 (Docket No. 1-1.) In his motion, Petitioner acknowledges his failure to timely file his  
9 motion within § 2255(f)'s one-year limitations period, but argues that equitable tolling  
10 should save his claim. (Docket No. 1-1 at 2, 4.) The government, in addition to challenging  
11 the merits of Petitioner's arguments, responds that equitable tolling is not warranted in this  
12 case. (Docket No. 8.)

## 13 II.

### 14 **Standard for Relief Under 28 U.S.C. § 2255**

15 A federal district court has jurisdiction to entertain a § 2255 petition when the  
16 petitioner is in custody under the sentence of a federal court. See 28 U.S.C. § 2255. A  
17 federal prisoner may challenge his or her sentence on the ground that, inter alia, it "was  
18 imposed in violation of the Constitution or laws of the United States." Id.

19 In general, a petitioner cannot be granted relief on a claim that was not raised at trial  
20 or on direct appeal, unless he can demonstrate both cause and actual prejudice for his  
21 procedural default. See United States v. Frady, 456 U.S. 152, 167 (1982). Claims of

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1 ineffective assistance of counsel, however, are exceptions to this rule. See Massaro v.  
2 United States, 538 U.S. 500 (2003) (holding that failure to raise ineffective assistance of  
3 counsel claim on direct appeal does not bar subsequent § 2255 review).

### 4 III.

#### 5 Analysis

6 Because Petitioner appears pro se, we construe his pleadings more favorably than we  
7 would those drafted by an attorney. See Erickson v. Pardus, 551 U.S. 89, 94 (2007).  
8 Nevertheless, Petitioner's pro se status does not excuse him from complying with  
9 procedural and substantive law. Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997).

10 Petitioner claims that equitable tolling is warranted because "there has been no  
11 intentional waiver and/or relinquishing of his constitutional rights." (Docket No. 1-1 at 2.)  
12 Later in his memorandum, Petitioner argues that the reason he did not timely file his § 2255  
13 motion was because his attorney informed him that it would be useless to do so. (Docket  
14 Nos. 1-1 at 4; 9 at 3.) For the reasons set out below, we think Plaintiff has failed to show  
15 that equitable tolling is appropriate in this case.

16 In a recent case, the First Circuit decided that as a matter of first impression, the one-  
17 year limitations period in § 2255(f) was subject to equitable tolling. United States v.  
18 Ramos-Martinez, 638 F.3d 315, 322 (1st Cir. 2011). In that decision, the First Circuit also  
19 articulated some "general principles" for courts to consider when deciding whether to grant  
20 equitable tolling. Id. We repeat some of those here.

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1 To begin with, a court's power to invoke equitable tolling should be used only  
2 "sparingly." Id. (quoting Holland v. United States, 130 S.Ct. 2549, 2563 (2010)).  
3 Moreover, a "habeas petitioner bears the burden of establishing the basis for equitable  
4 tolling." Id. (quoting Riva v. Ficco, 615 F.3d 35, 39 (1<sup>st</sup> Cir. 2007)). To satisfy this burden,  
5 a petitioner must show "(1) that he has been pursuing his rights diligently, and (2) that some  
6 extraordinary circumstance stood in his way and prevented timely filing." Id. (quoting  
7 Holland, 130 S.Ct. at 2562) (internal quotations and citations omitted). A court's inquiry  
8 should be fact intensive, made on a case-by-case basis. Id.

9 "Equitable tolling is not intended as a device to rescue those who inexcusably sleep  
10 upon their rights." Id. at 323. Consistent with this principle, a grant of equitable tolling  
11 will normally require a finding of "extraordinary circumstances." Id. at 323 (citing Riva,  
12 615 F.3d at 39). A petitioner seeking equitable tolling must also show that he exercised  
13 "reasonable diligence" to protect his own rights. Id. at 323-24. This standard does not  
14 demand, however, "a showing that the petitioner left no stone unturned." Id. at 324 (citing  
15 Baldyague v. United States, 338 F.3d 145, 153 (2d Cir. 2003)).

16 On this record, we think it fairly easy to say that Petitioner's arguments for equitable  
17 tolling come up short. In this case, the conviction became final in March 2006, after we  
18 entered our final amended judgment in Petitioner's case. (Crim. No. 03-52, Docket No. 49.)  
19 The one-year limitations period then expired in March 2007. Petitioner then waited more  
20 than three years and nine months before filing the present motion, in January 2011. (Crim.  
21 No. 03-52, Docket No. 54.) There are no other docket entries in Petitioner's criminal case

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1 that suggest Petitioner was exercising “reasonable diligence” to protect his rights during that  
 2 time. Ramos-Martinez, 638 F.3d at 323. On the contrary, the only thing we can surmise  
 3 from this nearly four-year period is that Plaintiff used this time to “inexcusably sleep upon  
 4 [his] rights.” Id. Petitioner provides no adequate explanation for this nearly four-year delay  
 5 in his brief. (Docket Nos. 1-1; 9.) He states that he diligently prepared his § 2255 motion  
 6 after recognizing the legal and constitutional errors in his case. (Docket No. 9 at 4.) But,  
 7 Petitioner’s “failure to contemplate” his claim earlier is “neither an extraordinary  
 8 circumstance, nor a circumstance which was out of [his] hands.”<sup>1</sup> Barreto-Barreto v. United  
 9 States, 551 F.3d 95, 101 (1st Cir. 2008).

10 Because we decline to toll § 2255(f)’s one-year limitations period, Plaintiff’s failure  
 11 to timely file his § 2255 motion dooms his claim.<sup>2</sup>

#### 12 IV.

#### 13 Certificate of Appealability

14 In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever  
 15 issuing a denial of § 2255 relief we must concurrently determine whether to issue a  
 16 certificate of appealability (“COA”). We grant a COA only upon “a substantial showing of  
 17 the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make this showing, “[t]he  
 18 petitioner must demonstrate that reasonable jurists would find the district court’s assessment

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<sup>1</sup> To the extent that Petitioner argues that attorney misconduct or error justifies equitable tolling, this claim is also without merit. Barreto-Barreto, 551 F.3d at 101 n.5 (noting that attorney error may justify equitable tolling where error is “egregious,” or in death penalty cases) (citations omitted).

<sup>2</sup> Our dismissal of Petitioner’s motion on timeliness grounds makes it unnecessary to address the government’s other arguments regarding the substantive merits of Petitioner’s claim.

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1 of the constitutional claims debatable or wrong.” Miller-El v. Cockrell, 537 U.S. 322, 338  
2 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). While Petitioner has not yet  
3 requested a COA, we see no way in which a reasonable jurist could find our assessment of  
4 Petitioner’s constitutional claims debatable or wrong. Petitioner may request a COA  
5 directly from the First Circuit, pursuant to Rule of Appellate Procedure 22.

6 **V.**

7 **Conclusion**

8 For the foregoing reasons, we hereby **DENY** Petitioner’s § 2255 motion (Docket  
9 No. 1). Pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings, summary  
10 dismissal is in order because it plainly appears from the record that Petitioner is not entitled  
11 to § 2255 relief from this court.

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 24th day of October, 2012.

14 s/José Antonio Fusté  
15 JOSE ANTONIO FUSTE  
16 United States District Judge